

ORDINANCE NO.

AN ORDINANCE ADDING A NEW ARTICLE 6 TO CHAPTER 2-7 OF THE CITY CODE RELATING TO ANTI-LOBBYING AND PROCUREMENT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 2-7 is amended to add a new article 6 to read:

ARTICLE 6. ANTI-LOBBYING AND PROCUREMENT.

§ 2-7-101 DEFINITIONS.

In this article:

- (1) **AUTHORIZED CONTACT PERSON** means the person designated in a City solicitation as the contact for questions and comments regarding the solicitation.
- (2) **NO-CONTACT PERIOD** means the period of time from the date of issuance of the solicitation until a contract is executed. If the City withdraws the solicitation or rejects all responses with the stated intention to reissue the same or similar solicitation for the same or similar project, the no-contact period continues during the time period between the withdrawal and reissue.
- (3) **RESPONSE** means a response to a solicitation and includes a bid, a quote, a request for proposal response or a statement of qualifications.
- (4) **RESPONDENT** means a person responding to a City solicitation including a bidder, a quoter, responder, or a proposer. The term “respondent” also includes:
 - (a) an owner, officer, employee, contractor, lobbyist, subsidiary, joint enterprise, partnership, or other representative of a respondent;
 - (b) a person or representative of a person that is involved in a joint venture with the respondent, or a subcontractor in connection with the respondent’s response; and
 - (c) a respondent who has withdrawn a response or who has had a response rejected or disqualified by the City.

1 (5) REPRESENTATION means a communication related to a response to a
2 council member, official, employee, or agent of the City which:

- 3 (a) provides information about the response;
4 (b) advances the interests of the respondent;
5 (c) discredits the response of any other respondent;
6 (d) encourages the City to withdraw the solicitation;
7 (e) encourages the City to reject all of the responses; or
8 (f) conveys a complaint about a particular solicitation.

9 (6) SOLICITATION includes an invitation for bids, a request for proposals,
10 a request for quotations, and a request for qualifications.

11 **§2-7-102 FINDINGS; PURPOSE.**

12 (A) The Council finds that it is in the City's interest:

- 13 (1) to provide the most fair, equitable, and competitive process possible
14 for selection among potential vendors in order to acquire the best and
15 most competitive goods and services; and
16 (2) to further compliance with State law procurement requirements.

17 (B) The Council intends that:

- 18 (1) each response is considered on the same basis as all others; and
19 (2) respondents have equal access to information regarding a
20 solicitation, and the same opportunity to present information
21 regarding the solicitation for consideration by the City.

22 **§2-7-103 RESTRICTION ON CONTACTS.**

23 (A) During a no contact period, a respondent shall make a representation
24 only through the authorized contact person.

25 (B) If during the no-contact period, a respondent makes a representation to a
26 member of the City Council, a member of a City board, or any other
27 official, employee, or agent of the City, other than to the authorized
28 contact person for the solicitation, the respondent's response is
29 disqualified from further consideration except as permitted in this

1 article. This prohibition also applies to a vendor that makes a
2 representation and then becomes a respondent.

3 (C) The prohibition of a representation during the no contact period applies
4 to a representation initiated by a respondent, and to a representation
5 made in response to a communication initiated by a member of the City
6 Council, member of a City board, or any other official, employee, or
7 agent of the City other than the authorized contact person.

8 (D) If the City withdraws a solicitation or rejects all responses with a stated
9 intention to reissue the same or similar solicitation for the same or
10 similar project, the no-contact period shall expire after the sixtieth day
11 after the date the solicitation is withdrawn or all responses are rejected if
12 the solicitation has not been reissued during the sixty day period.

13 (E) This section does not apply to a representation:

- 14 (1) made at a meeting convened by the authorized contact person to
15 evaluate responses;
- 16 (2) required by Financial Services Department protest procedures for
17 vendors;
- 18 (3) made at a Financial Services Department protest hearing;
- 19 (4) provided to the Small & Minority Business Resources Department in
20 order to obtain compliance with Chapter 2-9 (Minority-Owned and
21 Female Owned Business Enterprise Procurement Program);
- 22 (5) made to the City Risk Management coordinator about insurance
23 requirements for a solicitation; and
- 24 (6) made in public at a meeting held under the Texas Open Meetings
25 Act.

26 **§2-7-104 PERMITTED REPRESENTATIONS.**

27 (A) If a respondent seeks to make a representation to a City official,
28 employee, or agent during the no contact period, the respondent shall
29 submit the representation in writing only to the authorized contact
30 person. The authorized contact person shall distribute the written
31 representation in accordance with the terms of the particular solicitation.
32 This subsection does not permit a respondent to amend or add
33 information to a response after the response deadline.

1 (B) If a respondent seeks to make a complaint about a particular solicitation
2 to a member of the City Council or a member of a City board, the
3 respondent should include the complaint in his written representation to
4 the authorized contact person. The authorized contact person shall
5 distribute the complaint to members of the City Council or members of
6 the City board, to the Director of the Department that issued the
7 solicitation, and to all respondents of the particular solicitation.

8 **§2-7-105 NOTICE.**

- 9 (A) An employee preparing a solicitation shall include a notice in the
10 solicitation that advises respondents of the requirements of this article,
11 including a notice that if any official, employee or agent of the City,
12 other than the authorized contact person, approaches a respondent for
13 response or solicitation information during the no-contact period, the
14 respondent is at jeopardy if he or she makes any representation in
15 response.
- 16 (B) When a solicitation is issued that requires Council action, the authorized
17 contact person for that solicitation shall notify in writing each City
18 Council member that the no-contact period for that solicitation is in
19 effect.
- 20 (C) When a solicitation is issued that will be reviewed by a City board, the
21 authorized contact person for that solicitation shall notify in writing each
22 member of the board that the no-contact period for that solicitation is in
23 effect.

24 **§2-7-106 DISCLOSURE OF PROHIBITED REPRESENTATION.**

- 25 (A) If a City official or employee receives a representation during the no-
26 contact period for a solicitation, the City official or employee shall
27 notify in writing the authorized contact person for that solicitation as
28 soon as practicable. Notification to the authorized contact person must
29 be made using a form prescribed by the City and include any supporting
30 documentation.
- 31 (B) During the no-contact period, a City employee, except for the authorized
32 contact period, shall not solicit a representation from a respondent.
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1 **§2-7-107 ENFORCEMENT.**

2 (A) If the authorized contact person for a solicitation finds that a respondent
3 has made a prohibited representation during the no-contact period, the
4 authorized contact person shall document his findings in a report and
5 disqualify the respondent.

6 (B) The Financial Services Department and Public Works Department shall
7 adopt rules to administer and enforce this article. The rules must
8 include the provision of written notice of disqualification to the
9 respondent, and a process to protest a disqualification.

10 **§ 2-7-108 CONTRACT VOIDABLE.**

11 If a contract is awarded to a respondent who has violated this article, the contract is
12 voidable by the City.

13 **§2-7-109 DEBARMENT.**

14 (A) If a respondent violates this article more than once in a three year
15 period, the Purchasing Officer shall debar a respondent from the sale of
16 goods or services to the City for a period not to exceed three years,
17 provided the respondent is given written notice and a hearing in
18 advance of the debarment.

19 (B) The Financial Services Department shall adopt rules to administer and
20 enforce this section. The rules must include a hearing process with
21 written notice to the respondent.

22 **§2-7-110 NO CRIMINAL PENALTY.**

23 Section 1-1-99 does not apply to this article.

24 **PART 2.** This ordinance takes effect on _____, 2007.

PASSED AND APPROVED

_____, 2007

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Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk